

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CRESTMARK, a division of MetaBank, N.A.,

Plaintiff,

v.

FIRST WESTERN TRUST BANK,

Case No. 20-11396

Intervenor Plaintiff,

v.

SIMONXPRESS PIZZA, LLC, SIMON'S
ENTERPRISE, INC., and FAWZI R. SIMON,

Defendants.

**ORDER TERMINATING WITHOUT PREJUDICE INTERVENOR'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

On June 1, 2020, Plaintiff Crestmark, a division of MetaBank, N.A., filed this action alleging ten Defendants breached loan and guaranty agreements. (ECF No. 1, PageID.10-14.) First Western Trust Bank moved to intervene in the suit on June 28, 2020, asserting that three Defendants, Simonxpress Pizza, LLC, ("S. Pizza"), Simon's Enterprise, Inc., ("SEI"), and Fawzi Simon, defaulted on separate loan and guaranty agreements. (ECF No. 12, PageID.411-412.) The court granted First Western Trust Bank's motion to intervene on July 27, 2020, (ECF No. 18), and Intervenor filed a six-count complaint on December 21, 2020. (ECF No. 27.) On January 25, 2021, Plaintiff dismissed its claims against Defendants. (ECF No. 33, PageID.1063.)

Intervenor has filed a motion for summary judgment on three claims against Defendants S. Pizza, SEI, and Simon. (ECF No. 30.) The matter was thoroughly briefed. (ECF Nos. 35, 36, 38.)

On April 29, 2021, the court entered a stipulated order that detailed the terms of a settlement agreement between Intervenor and Defendants. (ECF No. 41.) The stipulation states that on April 9, 2021, “the Parties entered into a Settlement Agreement that is effective as of that day.” (*Id.*, PageID.1274.) “[T]he Settlement Agreement paves the way for the resolution of all issues in this case without the need for further discovery, a hearing on the [motion for summary judgment] or a trial.” (*Id.*, PageID.1275.) Defendants agreed to sell certain collateral, make payments toward their debts to Intervenor, and “refinance all outstanding obligations due and owing to [Intervenor].” (*Id.*) If Defendants default on their obligations under the settlement agreement, the stipulation allows Intervenor to “request [that] the Court enter [a] Confession of Judgment in its favor.” (*Id.*)

As explained in the stipulated order, the parties’ settlement agreement establishes the structure by which this case will ultimately be resolved. The parties have come to an agreement on liability and repayment, and resolution of Intervenor’s motion for summary judgment is no longer necessary. Thus, the court will terminate without prejudice the pending motion for summary judgment. This order does not affect Intervenor’s substantive rights, but is issued to avoid any confusion caused by motions lingering needlessly on the docket. Accordingly,

IT IS ORDERED that that Intervenor's Motion for Partial Summary Judgment
(ECF No. 30) is TERMINATED WITHOUT PREJUDICE.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 11, 2021

I hereby certify that a copy of the foregoing document was mailed to counsel of record
on this date, May 11, 2021, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522

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